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10 Attorneys for non-party Valve Corporation

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
MICROSOFT CORPORATION, et al.,
Defendants.

Case No. 3:23-cv-02880-JSC

**DECLARATION OF CHRISTOPHER
SCHENCK IN SUPPORT OF PLAINTIFF
FEDERAL TRADE COMMISSION'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

I, Christopher Schenck, declare and state as follows in support of Plaintiff Federal Trade Commission's ("Plaintiff" or the "FTC") Motion to Consider Whether Another Party's Material Should be Sealed in connection with Plaintiff's Initial Findings of Fact and Conclusions of Law (Dkt. No. 336):

1. I am in-house counsel at Valve. I am competent to testify and have personal knowledge of the facts stated below.

2. Valve is a private company headquartered in Bellevue, Washington with approximately 350 employees that develops PC video games. Valve also operates Steam, an online platform that lets users purchase and play PC games on their laptops and desktops. Over 50,000 PC games are available on Steam, more than 99% of which were made by third parties other than Valve.

3. Valve is a privately held company with no outside shareholders or lenders. It is not subject to public regulatory reporting and auditing requirements. Valve does not publicly disclose its sales and revenue information. Valve derives a significant value from the confidentiality of such information. In addition, because third party games are available on Steam, Valve has a large amount of confidential third-party sales and revenue information, which Valve does not publicly disclose in order to protect the third parties' confidentiality. Our agreements with these third parties require us to keep this information confidential.

4. In response to Plaintiff Federal Trade Commission (the “FTC”)’s February 7, 2023 subpoena in an administrative matter before the Federal Trade Commission Office of Administrative Law Judges (*In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, FTC Docket No. 9412), and pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 in that matter, Valve produced a document that contained highly confidential and competitively sensitive sales figures and financial information related to Valve’s Steam Deck under a “Attorneys’ Eyes Only” designation and under Bates number VALVE_FTC_MS_ACT_000001. All such information is proprietary to Valve, with restricted and controlled access (including through password protection) within Valve to preserve the confidentiality of this information. The FTC has included certain of this highly confidential Steam Deck sales information in its Initial Findings of Fact and Conclusions of Law (Dkt. No. 175) in this proceeding.

5. Valve requests sealing of the following document, in part, as shown below, which discloses Valve's highly confidential information:

Document	Portion to be Sealed
Plaintiff's Initial Findings of Fact and Conclusions of Law (Dkt. No. 175)	<ul style="list-style-type: none"><li data-bbox="1000 1535 1365 1564">Page 36, ¶ 252, line 20 (sales percentages)<li data-bbox="1000 1596 1365 1626">Page 83, ¶ 488, lines 15-17 (sales units and revenues)

¶ 252, line 20 of Plaintiff's Initial Findings of Fact and Conclusions of Law incorporates and

1 discloses highly confidential Valve sales information for Valve's Steam Deck, which is a handheld
2 PC. The statements by Dr. Lee discussed at page 36, ¶ 252, line 20 regarding sales percentages are
3 based on Valve's highly confidential dollar and unit sales information for Valve's Steam Deck that
4 is described above in Paragraph 4.

5 7. Page 83, ¶ 488, lines 15-17 of Plaintiff's Initial Findings of Fact and Conclusions of
6 Law similarly incorporate and disclose the highly confidential Valve sales information for the
7 Steam Deck that is described above in Paragraph 4. The statements in page 83, ¶ 488, lines 15-17
8 disclose United States sales units and sales revenues for Valve's Steam Deck, which is highly
9 confidential and competitively sensitive financial information.

10 8. The sales and financial information disclosed and discussed in these passages is
11 Valve's highly confidential sales and financial information, which was produced under a
12 "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" designation. Valve does not
13 disclose or share this highly confidential underlying information outside the company, particularly
14 to any competitor, and it would not be available in the ordinary course of business to the public.
15 Valve derives significant benefit from keeping this information confidential, and zealously
16 protects its confidentiality. Public release of this information could cause significant and unfair
17 harm to Valve and put it at a competitive disadvantage by providing competitors significant and
18 impactful insight into Valve's business and sales. The Valve confidential information regarding
19 Steam Deck sales (percentages, units, revenues) in page 36, ¶ 252, line 20 and page 83, ¶ 488, lines
20 15-17 of Plaintiff's Initial Findings of Fact and Conclusions of Law should therefore be sealed.

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed on
2 08/02/23 _____ at Bellevue, Washington.

3 DocuSigned by:

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